others, climbed upon the springboard, and was standing on its end, about to dive; when through lack of ordinary care on the part of the defendant, a pole supporting high-tension wires over its premises gave way. The wires struck the plaintiffs' intestate and swept him into the river, causing his death. His representatives sued, under a statute, for negligently causing his death. *Held*, that they be allowed to recover. *Hynes* v. *New York Central R. Co.*, 131 N. E. 898 (N. Y.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 68.

WILLS — PROBATE — LOST AND DESTROYED WILLS. —A statute provided that no will should be probated as a lost or destroyed will unless its existence at the time of the testator's death or its fraudulent destruction during his lifetime was proved. (1916 CAL. CODE CIV. PROC. § 1339.) Testatrix executed and kept in her possession a will, which was not found at her death. It was known to have existed seventy days before her decease, and her declarations during the last days of her life that she believed it then existed, were accepted in evidence. *Held*, that the will be probated as a lost will. *In re Sweetman's Estate*, 195 Pac. 918 (Cal.).

Statutory requirements similar to the one involved are common. See 1907 MONT. REV. CODE, § 7415; 1915 IND. STAT. § 3167; 1920 N. Y. CODE CIV. PROC. § 1865. Unless fraudulent destruction is established, actual existence at the testator's death must be proved. *Estate of Johnson*, 134 Cal. 662, 66 Pac. 847; *Estate of Patterson*, 155 Cal. 626, 102 Pac. 941; *Timon* v. *Claffy*, 45 Barb. (N. Y.) 438. The proof of such existence varies. Where the will is lost in the hands of a third person, since the testator has had no access to it and no presumption of revocation is raised, the will by presumption continues to exist. *Schultz* v. *Schultz*, 35 N. Y. 653; *Matter of Cosgrove*, 31 Misc. 422, 65 N. Y. Supp. 570. In the principal case the proof of existence is yet more tenuous. If a will, always in the testator's control, is not found among his papers at death, it is presumed that he destroyed it *animo revocandi*. *Matter of Kennedy*, 167 N. Y. 163, 60 N. E. 442; *Stetson* v. *Stetson*, 200 Ill. 601, 66 N. E. 262. See 1 JARMAN, WILLS, 6 ed., 152. To rebut this presumption, the testator's declarations are admitted. *In re Steinke's Will*, 95 Wis. 121, 70 N. W. 61; *Miller's Will*, 49 Or. 452, 90 Pac. 1002. See 1 UNDERHILL, LAW OF WILLS, § 277. *Contra, In re Colbert's Estate*, 31 Mont. 461, 78 Pac. 971. Then, this presumption being eliminated, by virtue of the presumption of continuing existence, existence at the testator's death is established. See 1916 CAL. CODE CIV. PROC., § 1963, (32). This result is logical, but technical and unsatisfying. Presumptions are apt to shelter rather than combat fraud. To approach a statutory provision, intended to prevent fraud, by so artificial a path of proof, is to fly in the face of its purpose. Far better strip each presumption to its core of reason and let the jury or trial court, weighing these cores as bits of evidence together with other bits of evidence, determine the fact of existence.

WILLS — REVOCATION — REVOCATION BY MARRIAGE. — The testator made a will bequeathing property to his fiancée, whom he married two days later. A statute provided that a marriage shall be deemed a revocation of a previous will. (1917 ILL. REV. STAT., c. 39, § 10.) Evidence was introduced of the fact that the will was made in contemplation of the marriage. *Held*, that the will was revoked. *Wood* v. *Corbin*, 296 Ill. 129, 129 N. E. 553.

In a case where the will showed on its face that it was made in contemplation of marriage, this court reached the opposite result. *Ford* v. *Greenawalt*, 292 Ill. 121, 126 N. E. 555. See 34 HARV. L. REV. 95. By the construction there given to the Illinois statute, its operation is like that of statutes expressly

excepting such wills from revocation by marriage. See 1914 GA. ANN. CODE, § 3923; 1902 MASS. REV. LAWS, c. 135, § 9. That decision might also be thought to imply that the statute simply enacts a presumption that marriage is a revocation. If so the principal case raises the question whether that presumption may be rebutted by evidence *dehors* the will. Such evidence may be regarded as introduced, not to vary the terms of the will, but to show that an apparent revocation was not so intended by the testator. Extrinsic evidence is properly admitted for this purpose. *Managle* v. *Parker*, 75 N. H. 139, 71 Atl. 637; *Gardner* v. *Gardner*, 177 Pa. St. 218, 35 Atl. 558. *Cf.* *Scoggins* v. *Turner*, 98 N. C. 135. It is similarly admissible to rebut the mere presumption raised by marriage under the law of some jurisdictions. *Miller* v. *Phillips*, 9 R. I. 141. See *Tyler* v. *Tyler*, 19 Ill. 151. But if the statute is absolute, the introduction of parol evidence is forbidden by rule of substantive law. *Ingersoll* v. *Hopkins*, 170 Mass. 401, 49 N. E. 623; *Ellis* v. *Darden*, 86 Ga. 368, 12 S. E. 652. See 1 JARMAN, WILLS, 6 Am. ed., § 112. If the statute enacts a presumption, the court in the principal case misapplies the parol evidence rule. But if it is absolute, the court is clearly right in refusing to construe it as admitting of further exceptions.

BOOK REVIEWS

TRAINING FOR THE PUBLIC PROFESSION OF THE LAW. By Alfred Zantzinger Reed. Being Bulletin No. 15 of the Carnegie Foundation for the Advancement of Teaching. New York: Scribner & Son. 1921. pp. xviii, 498.

The reviewer, as one academic writer to another, must say much that is complimentary of this report. It is a "patient, scholarly, and serious effort to trace the development of American legal education and the relation of the law school to the practice of the law." [1] Certainly the tracing of this development as a matter of history is the strong point of the work. Of the eight parts into which the volume is divided, the first seven are devoted to the history of the development of legal education and of the relation of the law school to practice. In this historical matter, and in the statistical tables of the appendix, there is a great fund of information with which future articles, local surveys, and bar association reports may be adorned. This portion of the report will stand as an authoritative source for facts and deductions concerning the history of legal education in the United States.

The efforts of the author at recording history are not, however, the end and aim of his work. Rather is it "to point out certain broad lines along which legal education and methods of admission to the bar must develop if the profession of the law is to fulfill its true function." [2] The relative brevity of Part VIII, we are told, "is not due to a belief in the value of antiquarian research for its own sake. Past events have been related at all only for the purpose of throwing light upon events still to come. . . . A generation of young men, stirred by the recent conflict, will soon assume control. . . . It is for these newcomers, and for the older men who see that this spirit must be reckoned with, that this study has been undertaken." [3] It is, therefore, a careful appraisement of what the author has given us as a guide and inspiration for the future which may very properly be made the subject of this review.

The author seems to recognize three fundamentally important subdivisions of his subject: *First*, What differentiations occur among lawyers? Obviously,

[1] Pp. xvi, xvii. [2] P. xvii. [3] Pp. 6, 7.